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CHICAGO-KENT LAW REVIEW

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PROFESSOR BERNADETTE ATUAHENE

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DIGNITY TAKINGS AND DEHUMANIZATION:

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Dehumanization is an important element of legal theorizing about property confiscation by state or governmental authorities that result dignity takings. Psychologists have theorized about dehumanization for decades, yet have only been able to subject the topic to empirical examination over the last 15 years or so. Moving the topic from the armchair to the laboratory has revealed a number of surprises to lay theories about dehumanization. First, everyone is capable of dehumanizing another person. Second, the social context determines when dehumanization takes place. Third, dehumanization does not always lead to negative behavior. Fourth, dehumanization is functional, allowing the completion of a task at hand. Fifth, dehumanization avoids empathy exhaustion. Here, I will summarize the state of the psychological literature on dehumanization, and explain the impact of dehumanization in a legal context by reviewing the few such studies in the literature. I will then review how each of the five scientific discoveries regarding dehumanization applies to the concept of dignity takings, as discussed in the other papers in this review. I will also consider a distinction in the use of the concept of dehumanization regarding dignity takings compared to the psychological literature. Finally, I will conclude by discussing further implications for property, labor, health-care, and education law regarding dehumanization and dignity takings.

DIGNITY TAKINGS IN THE CRIMINAL LAW OF

SEVENTEENTH-CENTURY ENGLAND AND THE

MASSACHUSETTS BAY COLONY

John Felipe Acevedo 743

When does a punishment for crime cross from being a legitimate goal of the state to a dignity taking? From the Norman Conquest until the middle of the eighteenth-century, the Common Law provided that in addition to execution, the property of convicted felons or traitors was forfeited to the crown and their blood corrupted so that their heirs could not inherit. I argue this is a clear instance of dignity takings. The colonists who traveled to Massachusetts Bay wanted a fresh start and so sought to create a model society based on Biblical law. Using around 6,000 criminal cases from 1630 to 1683 this paper argues that a different form of dignity takings ensued. The use of "scarlet letters," pillorying, whipping, and other public punishment were all designed to single out unworthy members of the com-



munity. I push Atuahene's concept of dignity takings by expanding the idea of a dignity taking to include not only the destruction of real or personal property but also the destruction of peoples' actual bodies.

DIGNITY RESTORATION AND THE CHICAGO POLICE TORTURE REPARATIONS ORDINANCE *Andrew S. Baer* 769

A recent municipal ordinance giving reparations to survivors of police torture in Chicago represents an unprecedented effort by a city government to repair damage wrought by decades of police violence. Between 1972 and 1991, white detectives under Commander Jon Burge tortured confessions from over 118 black criminal suspects on the city's South and West Sides. Responding to the needs of affected communities, a coalition of torture survivors, their families, civil rights attorneys, and community activists pushed the reparations bill through the City Council on May 6, 2015. Representing the holistic approach favored by survivors, the \$5 million reparations package awarded some 57 claimants \$100,000 each in financial payments; privileged access to psychological counseling, healthcare, and vocational training; as well as tuition-free enrollment in City Colleges for themselves, their children, and grandchildren. The ordinance also required the City offer an apology, erect a public memorial, create a community center to provide services for victims of police violence, and develop a public school curriculum to teach the Burge scandal to local schoolchildren. Applying concepts developed by Bernadette Atuahene, this essay argues that the Chicago police torture cases represent a dignity taking designed to dehumanize and infantilize local black people. It also posits the 2015 reparations ordinance as a promising new precedent for dignity restoration in cases of police violence in the United States. Despite limitations of scope and scale, Chicago's reparations ordinance models ways to include survivors of police violence in the process of repair, commemoration, and education.

DIGNITY TAKINGS IN GANGLAND'S SUBURBAN FRONTIER *Lua Kamál Yuille* 793

This paper engages the evolving dignity takings framework, first developed by Bernadette Atuahene, in the context of contemporary American street gangs (e.g. Crips, Bloods, Latin Kings, etc.). Contrary to most popular accounts, it starts with a reimagined and complicated notion of street gangs that emphasizes not their secondary or tertiary violence and criminality but their primary function as corporate institutions engaged in the sustained, transgressive creation of alternative markets for the creation of the types of property interests that scholars have associated with the development and pursuit of identity and "personhood." From this perspective, the paper applies the dignity takings analysis to public nuisance abatement actions (commonly known as gang injunctions), which have become standard tools in the national gang strategy. These civil mechanisms enjoin the conduct and activities of the gangs, prohibiting named individuals from engaging in a panoply of otherwise legal activities: e.g. displaying gang symbols, wearing clothing or colors associated with a gang, possessing tools or objects capable of defacing real or personal property (e.g. pens), appearing in public view with a known gang member. Through qualitative analyses of interviews, court documents, and political hearings, the paper demonstrates that the dispossession of identity property associated with suburban gang injunctions depresses self-esteem, erodes self-confidence, damages identity and feelings of community worth, and dehumanizes enjoined individuals in a way that deprives them of their fundamental right of dignity, constituting a clear example of a dignity taking.

NO PLACE TO CALL HOME: THE IRAQI KURDS UNDER THE BA'ATH, SADDAM HUSSEIN, AND ISIS *Craig Douglas Albert* 817

The Kurds are the world's largest ethnonational group without their own state. They have often been the target of ethnic strife and discrimination. Even



within their semi-autonomous territory, Iraqi Kurds have faced humiliation and oppression. This essay argues that the Kurds in Iraq have been deprived of their property and dignity and hence have been subjected to “dignity takings.” This occurred in three distinct phases: the 1970s under “Ba’athification,” the 1980s under Saddam Hussein, and at present under the Islamic State (ISIS). During each phase, the Kurds have suffered involuntary property loss through forced relocations and the destruction of homes and entire villages, and are victims of dehumanization and infantilization through mass killings, ethnic cleansing, and the denial of self-determination. This paper confirms that the Iraqi Kurds fit within the scope of the emerging field of dignity takings, and seeks to expand the parameters of infantilization to include the denial of self-determination.

ACCESS DENIED—USING PROCEDURE
TO RESTRICT TORT LITIGATION: THE
ISRAELI-PALESTINIAN EXPERIENCE

Gilat J. Bachar 841

Procedural barriers which limit individuals’ ability to bring lawsuits—like conditioning litigation upon the provision of a bond—are a subtle way to reduce the volume of tort litigation. The use of such procedural doctrines often spares legislatures from the need to debate the substance of legal rights, especially when those rights are politically controversial. This Article presents a case study of this phenomenon which has escaped scholarly attention, in the intriguing context of the Israeli-Palestinian Conflict. On the books, a unique mechanism enables non-Israeli citizen Palestinians of the West Bank and Gaza Strip to bring civil actions for damages against Israel before Israeli civil courts. Yet, since the early 2000s, Israel began using a host of procedural obstacles to restrict Palestinians’ access to its civil courts, effectively precluding their ability to bring claims arising from Israeli military actions. Through fifty-five in-depth interviews with lawyers, policy makers, plaintiffs, and other key stakeholders, alongside a host of secondary sources such as parliamentary protocols and NGO reports, this Article considers the impact this process has on Palestinians’ access to justice. While the use of procedure to encroach on an injured person’s right to compensation may be considered a taking of property, and thus, conceptualized as a dignity taking, such an analysis overlooks a key component of the harm caused to these individuals. Procedural restrictions that block access to the courts also deny Palestinians of their right to participate in the litigation process. Focusing only on property rights—the “end game” of the litigation—ignores benefits derived from the litigation process, including accountability, transparency, and recognition, which may be particularly important when it comes to plaintiffs from vulnerable, disadvantaged groups.

DIGNITY TAKINGS AND DIGNITY
RESTORATION: A CASE STUDY
OF THE COLOMBIAN LAND
RESTITUTION PROGRAM

Diana Esther Guzmán-Rodríguez 871

Over the past 50 years, Colombia has experienced intense socio-political violence associated with its internal armed conflict. As a result of this violence, long and complicated processes of land dispossession have taken place throughout the country, and more than seven million people have internally displaced. Currently, the Colombian state is implementing a Land Restitution Program, which aims to reconstitute the dispossessed lands and to transform deep inequalities associated with massive forced displacement. This case study on both the complexities of the land takings in Colombia and the Land Restitution Program’s ambitious goals contributes to strengthening the socio-legal concepts of dignity takings and dignity restoration.

In this study, I develop a set of variables to empirically assess the extent to which a property takings case involves dignity takings. Applying this set of variables, I find that land dispossession victims in Colombia have suffered different forms of dignity deprivation and yet, only some of them reach the level of dehumanization or infantilization. Moreover, my analysis shows that paying more attention to the context, historical processes leading to property loss, and the



particular position of the land-taking victims in a community can capture fundamental elements to achieve a deeper understanding of dignity deprivation. Therefore, the interaction between widespread violence, deep inequalities, and land dispossession is critical to comprehend the effects of dignity takings processes.

By using a content analysis of judicial rulings and semi-structured interviews with officials, I analyze the Land Restitution Program's transformative goals and foster a conversation between the concepts of dignity restoration and transformative reparation. Based on this conversation, I suggest that dignity restoration can play a significant role in transitional contexts beyond those that fit the concept of dignity takings, particularly if dignity restoration is considered a remedy for massive human rights violations.

UNCONSCIONABLE: TAX DELINQUENCY
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Andrew W. Kahrl 905

DIGNITY TAKINGS AND "TRAILER TRASH":
THE CASE OF MOBILE HOME PARK
MASS EVICTIONS

Esther Sullivan 937

Mobile homes are a primary source of shelter for America's poor and working classes. A large share of the nation's mobile home stock is found in mobile home parks where residents own their homes but lease the land under their homes from private landlords. Urban growth has put pressure on park landlords to sell and redevelop mobile home parks. When parks are redeveloped mobile home residents are evicted and entire communities are destroyed. Residents lose their homes and home equity as they struggle to relocate their homes to different parks or are forced to abandon them. Through two continuous years of comparative ethnography inside closing mobile home parks in the two states with the largest mobile home park populations (Florida and Texas) I examine how mobile home park disposessions are structured from the top down through municipal ordinances and financing regulations and how they are experienced from the bottom up by residents who are dehumanized in the characterization of "trailer trash." I argue that these mass displacements constitute a dignity taking in that they dispossess residents not only of their homes and communities, but of their full moral worth, autonomy, and voice in the political processes that structure their eviction.

FUCKING WITH DIGNITY:
PUBLIC SEX, QUEER INTIMATE
KINSHIP, AND HOW THE AIDS
EPIDEMIC BATHHOUSE CLOSURES
CONSTITUTED A DIGNITY TAKING

Stephen M. Engel 961
& *Timothy S. Lyle*

In the name of public health, authorities in San Francisco and New York City pursued the closure of gay bathhouses in 1984 and 1985, respectively. We challenge the dominant historical narrative that justified these closings, and through that challenge, we argue that these closures constituted a dignity-taking against gay and queer-identified men. Bathhouses were not simply dens of impersonal anonymous sex. They were critical sites of community development and queer kinship. Many governing authorities neither considered the value of these institutions nor grappled with queer understandings of space, contact, intimacy, and belonging. The debates and the closures that followed did substantial cultural and political work to render gay men culpable for their own community's sudden and relentless demise. As such, these closures were part of a larger anti-gay and anti-HIV cultural discourse that dehumanized and infantilized men who have sex with other men. The bathhouse closings fostered and perpetuated a narrative of culpability, ignited intense divisions within the gay and lesbian communities, and produced within gay men a deep distrust and even fear of governing institutions and



of one another. We suggest that this failure to engage with queer logics is ongoing and limits contemporary efforts of dignity restoration that include same-sex marriage recognition. Given the limits of dignity, we conclude by offering some thoughts on what queer dignity restoration might entail.

SOUND RECORDINGS AND DIGNITY TAKINGS:
REFLECTIONS ON THE RACIALIZATION OF
MIGRANTS IN CONTEMPORARY ITALY *Gianpaolo Chiriaco* 991

In the field of ethnomusicology, it is possible to consider musical collaborations – such as traditional fieldwork or joint musical projects between artists of different background – as spaces where different individuals and subjectivities share their own artistic practices and products, as well as the musical cultures of which they are representative or bearers. Such collaborations raise an array of methodological questions with implications to social justice and power relations. The aim of this contribution is to use the notion of dignity takings and dignity restoration to tackle some of these questions. While relying strongly on my own fieldwork in Rome and Chicago, I will also deal with works from ethnomusicologists who developed ways to combine collaborative efforts with the use of sound archives.

Central to my investigation is the figure of Badara Seck, a well-known vocalist from Senegal who has been active in Europe for about two decades. His musical collaborative projects both confirm and contest the racialization of so-called “migrant musicians” in Italy, that – I argue – can also be identified as a dignity taking. An interview with this expert in cross cultural collaborations provided interesting insights into the ways in which musicology and discourses around music can involve both a dignity taking and dignity restoration. I will use his words to conclude by proposing strategies to address dignity taking and dignity restoration in the practice of ethnographic fieldwork.

URBAN RENEWAL AND SACRAMENTO’S
LOST JAPANTOWN *Thomas W. Joo* 1005

THE STATE GIVETH AND TAKETH
AWAY: RACE, CLASS, AND URBAN
HOSPITAL CLOSINGS *Shaun Ossei-Owusu* 1037

This essay uses concepts from Bernadette Atuahene’s book *We Want What’s Ours: Learning from South Africa’s Land Restitution Program* to examine the trend of urban hospital closings. It does so by focusing specifically on the history of Martin Luther King, Jr. Community Hospital, a charitable hospital in South Los Angeles, California that emerged after the Watts riots in 1965. The essay illustrates how Professor Atuahene’s framework can generate unique questions about the closing of urban hospitals, and public bureaucracies more generally. The essay also demonstrates how Martin Luther King, Jr. Community Hospital’s trajectory hones some of Atuahene’s concepts in ways that can enhance the ways scholars write and think about the loss of property, the loss community institutions, and ways to remedy such losses.

BEYOND TRADEMARK: THE WASHINGTON
REDSKINS CASE AND THE SEARCH
FOR DIGNITY *Victoria F. Phillips* 1061

In her pioneering book, “We Want What’s Ours: Learning from South Africa’s Land Restitution Program,” Professor Bernadette Atuahene employs a detailed ethnographic study of South Africa’s land restitution program to develop the concept of a dignity taking. This article extends the application of Atuahene’s theory to the taking of intangible property arguing that the misappropriation of



cultural identity and imagery for use as a federal trademark can also constitute a dignity taking in certain cases. Perhaps no effort has received more public attention than the longstanding battle over the Washington NFL football team's name and its federally registered "Redskins" trademarks. The team's trademarks have been the subject of organized protest and litigation for decades. The Supreme Court recently invalidated the trademark law's prohibition on disparaging marks in another case leading to the dismissal of the longstanding challenge by the Native petitioners. This article looks beyond the challenge under federal trademark laws and explores whether the appropriation and commodification of the racial slur "redskins" and associated cultural imagery by the continued federal registration of the Washington team's trademarks should be deemed a dignity taking. This article first argues that the continued federal registration and use of these trademarks by the team constitutes both a direct and indirect taking of property sanctioned by the state. The federal registration sanctions a misappropriation of the identity, cultural rights, and personhood of Native people. This article then argues that the federal property right granted as a result of the taking of this racial slur and its associated cultural imagery has led to cognizable harms to the dispossessed Native population. The article uses first person narratives to demonstrate that Native self-esteem, self-confidence, and self-identity are degraded by the federally sanctioned misappropriation of these names and mascots. The pervasive use and commodification of this particular slur fosters an environment causing the Native community to experience forms of infantilization and dehumanization. Atuahene's dignity takings framework provides a useful lens and a jumping off point to further theorize the fundamental right of dignity, this particular takings controversy and other disputes involving harms caused by the misappropriation of both tangible and intangible forms of cultural property.

CREATING THE URBAN EDUCATIONAL
DESERT THROUGH SCHOOL CLOSURES
AND DIGNITY TAKING

Matthew Patrick Shaw 1087

Closures of urban open-enrollment neighborhood schools that primarily serve students of color are intensely controversial. Districts seeking to economize often justify closures by pointing to population shifts in historically densely populated urban areas. They argue that net reductions in a neighborhood's school-aged population result in underutilized schools, which do a disservice to students at higher cost to districts. Students and their families and communities counter, pointing to histories of district neglect of their schools and recent school expansions in more affluent neighborhoods of similar population density as belying district claims of utility-based downsizing. In this article, I use a critical discourse analysis (CDA) of Chicago Public Schools' (CPS) school closure hearings process for William H. King Elementary School to show how affected communities experience formal-process-driven school closure as an "abnormal justice" moment, characterized by "misrecognizing" community-based notions of property, "misrepresenting" these interests in how they characterize the school's value, and "maldistributing" the physical school property through closure (Fraser, 2008 in Fay, n.d.). I argue that closing schools in this manner compounds the physical property loss with a "dignity taking" (Atuahene, 2014) that leaves an "educational desert" in its aftermath, with implications for laws on educational property interests.

DIGNITY TAKINGS IN COMMUNIST
POLAND: COLLECTIVIZATION AND
SLAVE SOLDIERS

Ewa Kozerska 1115
& *Piotr Stec*

Poland's history in the 20th century could be as well script of a movie. A country that had lost its independence in the 18th century regained it in 1918 only to fall prey to Nazi Germany twenty years later. After World War 2 Poland was under Communist rule that ended in 1989 with the fall of the Iron Curtain. In this paper we deal with dignity takings as defined by professor Bernardette Atuahene that took place mostly in the early phase of the Communist era.



Creation of the Communist “brave new world” required total transformation of the society, sometimes referred to as “re-forging of souls” (*perekovka dush*). People who were reluctant to become enthusiastic adherents of the new social and political system or simply belonged to social groups stigmatized as so-called “class enemies” became second class citizens, doomed to extinct.

In this paper we show three distinct examples of dignity takings: young men from “class enemy” families turned into slave-soldiers, priests in training harassed and brainwashed during compulsory military service and farmers deprived of their land and forced to join collective farms. In order to present the process of dignity takings we use a top-down approach, starting with ideological justification of of takings in the Communist doctrine, and then showing how this policy was implemented. Although we focus on the takings phase, some consideration will be given to resistance against de-humanization and denigration caused by dignity takings.

Finally, we show that the dignity takings method can be a useful tool for analysis of law and policy of totalitarian systems.

DIGNITY CONTRADICTIONS:

RECONSTRUCTION AS RESTORATION *Taja-Nia Y. Henderson* 1135

DAMAGED BODIES, DAMAGED LIVES:

IMMIGRANT WORKER INJURIES AS

DIGNITY TAKINGS

Rachel Nadas 1155
& *Jayesh Rathod*

Government data consistently affirm that foreign-born workers in the U.S. experience high rates of on-the-job illness and injury. This article explores whether—and under what circumstances—these occupational harms suffered by immigrant workers constitute a dignity taking. The article argues that some injuries suffered by foreign-born workers are indirect takings by the state due to the government’s lackluster oversight and limited penalties for violations of occupational safety and health laws. Using a framework of the body as property, the article then explores when work-related injury constitutes an infringement upon a property right. The article contends that the government’s weak enforcement apparatus, coupled with state-sanctioned hostility towards immigrants, creates an environment where immigrant workers are deemed to be sub-persons, and where employer impunity abounds. Drawing upon data gleaned from a research study of immigrant day laborers in northern Virginia, the article describes a range of practices by employers in cases of workplace accidents, noting the circumstances that are indicative of dehumanization, and thus, dignity takings.

DIGNITY AND DISCRIMINATION:

EMPLOYMENT CIVIL RIGHTS IN THE

WORKPLACE AND IN COURTS

Laura Beth Nielsen, 1185
Ellen C. Berrey,
& *Robert L. Nelson*

Employment civil rights and the litigation associated with enforcing them are a complex interplay of public and private employers, regulatory agencies, and federal courts. When an employee loses a job or their position in an employing organizations, the financial effects are very real. If the employee makes a claim of discriminatory treatment using the employer’s human resources complaint processes or with the EEOC or state equivalent, they often face workplace retaliation and even termination. Using interviews conducted with parties to employment civil rights lawsuits, this article argues that the regime of employment civil rights in the United States can be conceived as perpetuating dignity takings (and occasionally dignity restorations) because (1) the state sanctions/permits/gives deference to management in ways that allow discrimination and loss of earnings and (2) does it in a way that allows and perpetuates dehumanizing infantilizing demon-



strates that plaintiffs face dehumanizing stereotyped treatment in the workplace and in courts.

DIGNITY TAKINGS AND
WAGE THEFT

César F. Rosado Marzán 1203

STUDENT NOTE

CLASS DISMISSED: COMPELLING A
LOOK AT JURISPRUDENCE SURROUNDING
CLASS ARBITRATION AND PROPOSING
SOLUTIONS TO ASYMMETRIC BARGAINING
POWER BETWEEN PARTIES

Matthew R. Hamielec 1227

Class actions and arbitrations have existed since the United States' inception. Since the mid-twentieth century, both Congress and the U.S. Supreme Court have helped arbitration blossom from litigation's overshadowed alternative to a prominent means of resolving disputes. Soon, the commercial industry proceeded to incorporate arbitration provisions in their consumer and employment contracts. That way, when a dispute arose between the business and a person, the business would arbitrate with claimants individually. Plaintiffs' attorneys who favored collective action proceedings like class actions, however, pushed for courts' allowance of class arbitration—a class proceeding conducted within an arbitration's confines.

Corporations litigated such class arbitrations' legitimacy; their efforts are catalogued in a series of U.S. Supreme Court challenges that started in the early 2000s and continue to the present day. In many instances, these seemingly mundane cases resulted in sharply divided holdings by the Court's justices; most notable of these were *AT&T Mobility, LLC v. Concepcion* and *American Express Co. v. Italian Colors Restaurant*, where the Court upheld individual arbitration provisions in pre-dispute contracts, and foreclosed plaintiffs' access to class arbitrations and class actions in many contractual contexts.

This Note begins by summarizing the jurisprudential stance presently assumed by the Supreme Court in cases addressing arbitration provisions. It subsequently outlines the kaleidoscopically variant viewpoints on arbitration clauses from legal scholars, large law firms, and media outlets. Finally, the Note posits several solutions to the growing problem many individuals face when they enter into some of the most routine contracts of everyday life: the foreclosure of their ability to proceed as a class in a collective action against a plaintiff and effectively redress their grievances.



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